UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

JUL 26 2005

Donald McIsaac, Ph.D.
Executive Director
Pacific Fishery Management Council
7500 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

Dear Dr. McIsaac:

Thank you for the July 1 letter regarding the National Marine Sanctuaries Act (NMSA) section 304(a)(5) opportunity to prepare draft sanctuary fishing regulations to implement marine reserves and marine conservation areas in federal waters of the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). We appreciate the Pacific Fishery Management Council's (PFMC or Council) input, and your informing us of the Council's June 2005 recommended action on groundfish essential fish habitat (EFH) relative to CINMS, as well as the Monterey Bay and Cordell Bank National Marine Sanctuaries. This letter addresses the concerns and issues you raised in your letter.

I. Preparation of Draft Fishing Regulations for CINMS under the National Marine Sanctuaries Act

Per your statement regarding a change in the NMSA process (e.g., the timing of and need for draft regulations prior to issuance of a completed draft EIS), please be assured that there have been no changes to the NMSA section 304(a)(5) and NEPA processes that have been described and discussed with the Council. NOAA has described this process in letters, informational materials and several staff presentations to the Council since early 2003 and at nearly every Council meeting to date. We hope this letter clarifies any outstanding confusion regarding the NMSA section 304(a)(5) process.

One issue expressed by the Council is its concern that it did not receive a full draft of an analysis of a draft environmental impact statement prior to taking action on the Sanctuary's section 304(a)(5) request for the CINMS. We believe that the analysis and information provided are fully sufficient to support the Council's deliberations, as described in the next paragraph.

The information provided by the NMSP to the Council on May 25, 2005 included the goals and objectives for establishing marine reserves and marine conservation areas in the Sanctuary. These provide the benchmark by which the Council is to prepare NMSA fishing regulations under section 304(a)(5). Also included in the May 25 letter was an analysis of possible zoning alternatives and model regulations to assist the Council in responding to the section 304(a)(5) opportunity. This summary analysis contained information for the purposes of preparing draft

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NMSA regulations at this stage of NOAA's regulatory and National Environmental Policy Act process for the CINMS. The Council has been provided all the facts and analysis available to date either within the summary document or by reference. In addition, this information builds on the preliminary environmental document provided the Council in May 2004, to get as much Council input as early as possible, and the Council's comments received on that document. Consequently, we believe that the level of analysis and information provided to assist the Council is fully sufficient to support the Council's deliberations. This information, along with the Council's response, will be discussed in the DEIS that will be issued for public comment.

II. Alternatives Considered to Date for Proposed CINMS Reserves

The Council expressed concern regarding the range of alternatives provided in the section 304(a)(5) supporting materials.

The section 304(a)(5) process is specific to the Council preparing draft NMSA fishing regulations only, and to that end, we are coordinating with the State on what, if any, additional State action may be necessary to complement regulations promulgated under the NMSA. However, given the Council's and State of California's request to consider whether the Sanctuary's goals and objectives can be achieved under the Magnuson-Stevens Act and State authorities, we have also included in the supporting materials an alternative that relies on these authorities *(see the Supporting Document, Section III; Alternatives - Regulation Under the MSA and State Authorities (p. 23) and Appendix A, B and C.)*.

The Miller/Hoeflinger proposal referenced by the Council is included as Alternative 1; *(see the Supporting Document, Section III, Alternatives, p. 17).* Please note that this alternative represents an evolution of zoning options originally developed by Mr. Miller and Mr. Hoeflinger, and was endorsed by the Commercial Fishing Working Group of the Sanctuary Advisory Council. Regarding the PFMC recommendation to consider marine conservation areas, this proposal is embedded in Alternative 1 where the areas proposed are all marine conservation areas instead of marine reserves. Additionally, a general comparison of marine conservation areas and marine reserves is referenced and available in the 2002 CDFG CEQA document.

In its June meeting, the Council unanimously supported the State of California's recommendation to designate the CINMS Alternative 2 mapped areas as Habitat Areas of Particular Concern, with all necessary measures taken to ensure that they achieve a de facto "no take" status, through the use of EFH "no fishing" measures, additional FMP amendments, and follow-up State actions as necessary. The Council's recommendation supports the substantive implementation of the current draft Alternative 2 in the section 304(a)(5) materials, which is predominantly made up of no-take reserves, albeit under a different regulatory mechanism than the NMSA. However, in order to ensure a reasonable range of NEPA alternatives, the draft environmental impact statement will consider conservation areas (that allow some types of fishing) as well as no-take marine reserves.

III. Timeline

We appreciate your acknowledgement of the need to keep the NMSA and NEPA process moving forward. As provided in the July 19, 2005 letter from Vice Admiral Lautenbacher, we agree to grant the Council's request for an additional extension of the 120-day period to allow for a response by November 23, 2005, rather than November 16. It is important to note that, as stated in our original section 304(a)(5) request for the CINMS, "providing the PFMC with this opportunity (to draft regulations) does not presuppose that regulations will be issued under the NMSA…" Similarly, NOAA Fisheries is continuing with the administrative process necessary for NOAA to make a decision regarding all of the Council's recommended EFH actions under the Magnuson-Stevens Act (MSA).

Keeping both the NMSA and MSA administrative processes moving forward for CINMS, as well as for the joint management plan review for Monterey Bay, Cordell Bank (and Gulf of the Farallones) sanctuaries, will help ensure that these sanctuaries' goals and objectives related to fishing activities can be implemented in a timely manner once NOAA determines the most appropriate implementing authority.

IV. Council Action Under Groundfish EFH for Protection of California Sanctuaries

The Council's unanimous endorsement of the State of California's recommended EFH protection measures for CINMS at the June meeting is clear recognition of the importance of this area. At the June meeting, the State of California expressed desire to see EFH and other State or federal fishing regulations enacted as necessary in order to complete the originally envisioned marine protected area network in a timely manner. Your July 1, 2005 letter also states that implementation of the Council's groundfish EFH recommendation of establishing "no fishing" zones may achieve the CINMS ecosystem protection goals and objectives, but that additional State and federal fishery management actions might also be necessary.

I want to also take this opportunity to acknowledge the Council's June EFH recommendations toward meeting the goals and objectives for the Monterey Bay and Cordell Bank National Marine Sanctuaries' proposed actions. As you know, NOAA's analysis of the MSA includes reviewing whether it can be used to achieve all or part of the NMSP's goals and objectives of restricting fishing below 3000 feet over Davidson Seamount for the Monterey Bay National Marine Sanctuary, and restricting bottom-contact gear within the 50-fathom isobath surrounding Cordell Bank in the Cordell Bank National Marine Sanctuary.

Consequently, the complexity of the Council's recommendations make it critical that all of the necessary pieces regarding the process, timing and final implementation of the proposed action be identified before the analysis can be completed, and evaluated. As Admiral Lautenbacher's letter indicates, NOAA expects to complete its analysis by September or October, 2005, at which time an evaluation and determination on the most appropriate course of action will be made.

We look forward to continuing to work with the PFMC particularly in preparation for its September and November meetings. If you have any question regarding the CINMS process, please do not hesitate to contact Chris Mobley, CINMS Manager at (805) 966-7107. If you have any questions regarding the JMPR process, please contact William Douros, MBNMS Superintendent at (831) 647-4201.

Sincerely,

Daniel Basta
Director
National Marine Sanctuary Program

cc: William Hogarth, Assistant Administrator, NOAA Fisheries
Michael Chrisman, California Secretary of Resources
Ryan Broddrick, Director, California Department of Fish and Game